

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

**MCKENZIE-WILLAMETTE REGIONAL
MEDICAL CENTER ASSOCIATES, LLC, d/b/a
MCKENZIE-WILLAMETTE MEDICAL
CENTER,**

Respondent,

**Case Nos.:19-CA-077096
19-CA-095797**

and

**SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 49, CTW-CLC,**

Charging Party.

Adam D. Morrison, for the Acting General Counsel.

Don Carmody, for the Respondent.

Gene Mechanic, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. Service Employees International Union Local 49, CTW-CLC (the Charging Party or Union) filed the respective charges, as amended, on March 22, 2012¹, May 23, and January 3, 2013, and the Acting General Counsel (General Counsel) issued the consolidated complaint (complaint) on February 19, 2013. The Respondent, McKenzie-Willamette Regional Medical Center Associates, LLC d/b/a McKenzie-Willamette Medical Center (Respondent or McKenzie), filed a timely answer on March 5, 2013, denying all material allegations and setting forth affirmative defenses.²

¹ All dates are in 2012 unless otherwise indicated.

² More than once at hearing and in its answer, the Respondent argues, citing *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), that the Board cannot decide this case because it lacks a quorum due to the alleged unconstitutional recess appointment of two of the three current Board members. For the reasons stated in *Bloomingtondale's Inc.*, 359 NLRB No. 113 (2013), and *Belgrove Post Acute Care Center*, 359 NLRB No. 77 (2013), these arguments are rejected. In any event, the Acting General Counsel is not a recess appointee.

The complaint alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) for unreasonably delaying the furnishing of relevant information requested by the Union and by failing to furnish information requested by the Union. This case was heard on March 12, 2013, in Eugene, Oregon. On March 11, ahead of hearing, I denied Respondent's petition to revoke General Counsel's document subpoena and I ordered Respondent to produce records at trial. (GC Exh. 19.) Respondent failed to produce and documents at trial without any satisfactory explanation why it would not produce the subpoenaed documents.³

On the entire record⁴, including my observation of the demeanor of the witnesses, and after considering the brief filed by General Counsel⁵, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Jurisdiction

At all times material, Respondent, a Delaware corporation, with an office and place of business in Springfield, Oregon, has been operating an acute care hospital providing inpatient and outpatient medical care. In about 2010, Community Health Systems (CHS), a national hospital corporation, purchased Respondent's hospital. Respondent admits, and I find, that during the calendar year ending December 31, 2012, it derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$5,000 directly from points outside of Oregon. Respondent also admits, and I find, that at all material times, it has been a health care institution within the meaning of Section 2(14) of the Act and has been engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act. The parties further

³ At hearing, the General Counsel moved and I granted *Bannon Mills*, 146 NLRB 611, 614 fn. 4 633–634 (1964), sanctions and drew adverse inferences against Respondent and barred Respondent from presenting any evidence challenging the information requests or the underlying relevancy of those requests for Respondent's continued failure to produce documents at trial in response to a February 22, 2013 document subpoena. See Tr. 13-16, 33-34; GC Br. at 7-9; GC Exh. 19; and *Teamsters Local 776 (Pennsylvania Supply, Inc.)* 313 NLRB 1148, 1154 (1994)(adverse inference properly drawn against the party who refuses to comply with the subpoena with respect to the subject matters sought by the subpoena).

⁴ I hereby correct the transcript as follows: Tr. 18, line 23: "noel" should be "Noel"; Tr. 19, line 24: "mechanic" should be "Mechanic"; Tr. 20, line 8: "redirect" should be "directly"; Tr. 21, line 18: "2013" should be "2012"; Tr. 27, line 12: "CGS" should be "CHS"; Tr. 34, line 8: "a satisfy" should be "an unsatisfactory"; Tr. 51, lines 1, 6, 13, and 17, and continuing later throughout the transcript: "HEARING OFFICER" should be ADMINISTRATIVE LAW JUDGE"; and Tr. 114, line 2: "successful" should be "successor."

⁵ Despite an April 16, 2013 post-hearing brief filing deadline communicated to all parties at hearing, only the Acting General Counsel timely filed a post-hearing brief on April 16, 2013. On May 10, 2013, more than 3 weeks after the previously-mentioned post-hearing brief filing deadline, the Respondent and the Charging Party filed and served a joint motion requesting that I approve the withdrawal of charges and dismissal of the consolidated complaint in this action due to a non-Board Settlement Agreement dated April 30, 2013 between the Respondent and the Charging Party, which motion was denied by me on May 30, 2013 for failure to satisfy the factors laid out in *Independent Stave Co.*, 287 NLRB 740, 743 (1987).

admit, and I find, that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

B. Background Facts

At all material times since about July 29, 2004, based on Section 9(a) of the Act, the Respondent has recognized the Union as the exclusive bargaining representative for the unit of non-professional employees (the Unit) which constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.⁶ The Union and the Respondent have entered into successive collective-bargaining agreements (CBA's), the most recent of which was effective from May 11, 2011, through December 31, 2013 (the current CBA). The CBA contains a grievance and arbitration procedure and specifies that health insurance will be provided to employees by Respondent using the CHS health benefit plan, its own self-insured plan.

The parties further admit, stipulate to, and I find that Respondent's Vice President of Human Resources, Megan O'Leary (O'Leary), is a supervisor of Respondent, within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act. Furthermore, the parties admit, stipulate to, and I further find that Respondent's Perioperative Director, Dee Boshaw, and its Cardiovascular Operating Room (CVOR) Director, Vivian Hoppe (Hoppe), are both supervisors of Respondent, within the meaning of Section 2(11) of the Act and also agents of Respondent within the meaning of Section 2(13) of the Act.

C. Unfair Labor Practices

Joseph West (West) has been employed by the Union as its primary organizer at the Respondent since 2010. West represents unit employees at the Respondent and, among other things, he recruits and trains union stewards, makes sure that unit members at worksites have appropriate information and he handles numerous grievances, information requests, worksite meetings with Respondent's human resources officers, and he deals with all worksite restructures.

Lynn-Marie Crider (Crider) has also been employed by the Union as a bargaining coordinator for approximately six years with a break in service from 2009 to September, 2011, when she returned to the Union. Crider expects to be the primary negotiator for the Union when negotiations with the Respondent come due for a successor CBA later this year. In her capacity as bargaining coordinator, Crider also assists less skilled bargainers with collective bargaining, handles negotiations for new contracts, and with a specialty in healthcare and healthcare policy issues, she often comes into bargaining when there are issues related to healthcare and employee health benefits.

The complaint in these cases, as amended, alleges one continuing unlawful delay by the Respondent in providing information requested by West on behalf of the Union first in February, and one unlawful failure to furnish information requested in November by Crider on behalf of the Union.

⁶ The Unit employees are more particularly described in the non-professional positions set forth in Appendix A annexed and incorporated by reference in the Complaint. GC Exh. 1(n) at 3 and Appendix A.

First, the General Counsel alleges that since February 23 and continuing to September 23, the Respondent unreasonably delayed providing the Union repeatedly requested relevant information. Specifically, the requested information relates to the personnel files, including disciplinary and corrective actions, of certain named bargaining unit employees which support the Respondent's February 21 grievance response letter concerning one named bargaining unit employee's work performance and behavior along with the weekly CVOR (CVOR) department work schedules for January and February.

Second, it is further alleged that the Respondent, despite repeated requests beginning in November, unlawfully failed to furnish the Union requested information which generally relates to information about the Respondent's health insurance plan covering its bargaining unit employees. The request for this health insurance plan information was made after the Respondent informed the Union of its intent to make changes to the plan prior to the expiration of the current CBA.

1. The Union's February 23 and May 14, 2012 Requests for Information

As described above and in paragraphs 6(a), 6(b), 6(g)-6(i), 7 and 8 of the complaint, the General Counsel alleges that since February 23 and continuing to September 23, the Respondent unreasonably delayed providing the Union repeatedly requested relevant information. Specifically, the requested information relates to the personnel files, including disciplinary and corrective actions, of certain named bargaining unit employees which support the Respondent's February 21 grievance response letter concerning one named bargaining unit employee's work performance and behavior along with the weekly Cardiovascular Operating Room department schedules for January and February.

In early February, West filed a grievance with O'Leary on behalf of unit employee Melissa Frost (Frost), a unit employee scrub technician in the CVOR, alleging abuse discrimination and retaliation directed toward Frost by Hoppe and O'Leary and West requested all information regarding the investigation concerning the work environment in the CVOR. (GC Exhs. 2 and 3.)⁷

On February 21, O'Leary responded to West and Frost's Step 1 grievance by denying it on grounds that included that the grievance does not state a cognizable violation of the CBA and does not state sufficient facts to support a winning grievance. Moreover the response lays blame on Frost's own conduct for any alleged hostile work environment. (GC Exh. 4.)

After receiving O'Leary's February 21 grievance response, West advance Frost's grievance to step 2. On February 23, West requested information from O'Leary in support of Frost's step 2 grievance including, but not limited to, personnel files of Frost, another unit employee, and current and former employees connected to the CVOR, all disciplinary actions and all corrective action for the same employees, a list of employees and documents that relate to interactions

⁷ Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather are based on my review and consideration of the entire record for this case.

between these employees from May 2011 including the respondent's response to the interactions, all documents relied on by the respondent in denying Frost's step 1 grievance. (GC Exh. 5.)

5 The Respondent provided no information to the Union's information request and on March 14, West repeated his request to O'Leary on behalf of Frost. (GC Exh. 6.) After receiving no information from the Respondent, West advanced Frost's grievance to Step 3 on March 19. (GC Exh. 7.)

10 West sent additional informational requests to O'Leary on March 21, March 22, and May 14 that repeated the original request for information and added a request for the weekly CVOR work schedules for all of January and February. (GC Exh. 8 – 10.) The Respondent did not respond to these information requests at that time and did not object to any of the requests on any grounds.

15 Eventually, the Union received the information from the Respondent on September 23. By this time, the Union had already processed the grievance up to the point of arbitration. After finally receiving the requested information, the Union rescinded Frost's grievance based on the information it received and its legal counsel's re-consideration of the merits of the grievance.

2. The Union's November 21, 2012 Request for Information

25 As described above and in paragraphs 6(c)-6(g), 6(j), 7 and 8 of the complaint, it is further alleged that the Respondent, despite repeated requests beginning in November, unlawfully failed to furnish the Union requested information which generally relates to information about the Respondent's health insurance plan covering its bargaining unit employees.

30 The CBA provides that the Respondent shall provide the Union with advance written notice of any proposed health plan benefits modifications. (GC Exh. 12 at 38-41.)

35 O'Leary had previously provided the Union with such advance notice tied to proposed changes in Respondent's health care benefits for 2011 and the Union responded by requesting information tied to the proposed modifications. The Respondent provided the Union some of the requested information and O'Leary later told Crider that the Respondent was withdrawing its proposed changes to its health benefits in 2011.

40 In mid-November, West had conversations with O'Leary after she asked to meet with him to provide him proposed health plan benefit modifications for early enrollment for employees in advance of the upcoming 2013 health plan year. O'Leary provided West with a basic summary containing the Respondent's proposed increased benefits costs for employees and their family for Respondent's various medical plans effective for 2013. (GC Exh. 11.) West told O'Leary that the
45 Union had a right to respond and request additional information concerning the proposed changes to the health plan benefits brought on by the basic summary provided to him by O'Leary.

50 Later in November, West passed on the same basic summary information he had just received from O'Leary (GC Exh. 11) to Crider as the Union's CBA bargaining coordinator and

she continued the dialogue between the Union and the Respondent from that point forward with O’Leary.

As she had done in the past, Crider reviewed the Respondent’s basic summary of proposed changes to the health plan benefits for 2013 and on November 21, Crider prepared and sent to O’Leary a request for health insurance plan information with a production deadline of December 10 after the Respondent informed the Union of its intent to make changes to the plan prior to the expiration of the current CBA which includes the following:

- (i) Copy of Summary Plan Description;
- (ii) Financial impact of the plan design and employee contribution rate changes;
- (iii) Actuarial value of the plan;
- (iv) Cost of the plan to McKenzie-Willamette [Respondent];
- (v) Method of fixing plan cost to McKenzie-Willamette;
- (vi) Reserves (for payment of claims);
- (vii) Experience (reporting figures);
- (viii) Medical claims cost and administrative expenses;
- (ix) Medical claims incurred for services at CHS-affiliated hospitals;
- (x) Actual cost to supply services at CHS-affiliated hospitals;
- (xi) Contractual discounts for services provided at CHS-affiliated hospitals; and
- (xii) Prices to the plan of services provided at McKenzie-Willamette entities, other network providers, and non-network providers.

(GC Exh. 13.)

Crider explained that this information was needed so that she and the Union could effectively bargain with Respondent about its proposed changes to its health plan. Her 4-page November 21 letter contains further reasons why the Union needed the information. (GC Exh. 13.) Significantly, Crider explained that the summary plan documents were needed to establish a baseline for discussions of proposed changes to the plan, financial information was needed for an independent analysis of the overall cost of the plan to evaluate what portions of the proposed plan cost increases should be shouldered by the unit employees versus other ways to shift costs elsewhere, local Respondent operating costs were needed to compare to the CHS national plan costs, and information related to costs at other CHS-affiliated hospitals would be used for comparison and alternate proposals at anticipated bargaining sessions.

The Respondent did not provide any of the requested information to the Union by December 10 or any other time.

On December 14, Crider called and left O’Leary’s staff a telephone message asking O’Leary to call Crider back.

Crider called O’Leary again on December 17 and told her that she was calling to follow up on the November 21 information request letter and Crider asked her if the Respondent intended to respond to the request for information. O’Leary told Crider that she had sent the request letter on to Respondent’s lawyers and they would be talking to the Union. The two further discussed the Union’s need for the requested information and that the union would take the necessary steps to obtain the requested information. O’Leary acknowledged that she understood this.

Moreover, Crider pointed out to O’Leary that it was unclear to the Union whether the Respondent intended to make the proposed changes to its health care plan beginning in less than a month as referenced in the basic summary proposal from O’Leary gave to West just a month before. In addition, Crider further pointed out to O’Leary that the Union had not yet received the written formal notice of the proposed modifications to the health plan called for in the CBA. O’Leary responded by telling Crider that Respondent was not planning “at that moment” to make any changes to its health plan but that Respondent was talking to the both its unions about such proposed changes. O’Leary further commented that that she believed that formal notice to the Union is only necessary to make changes that allow the Respondent to terminate the CBA.

On December 18, Crider received O’Leary’s December 17th written notice of proposed changes to Respondent’s 2013 health plan benefits addressed to the Union’s president, Ms. Meg Niemi (Niemi), which contradicted O’Leary’s oral statement to Crider the day before that Respondent was not planning to make changes to its health plan. (GC Exh. 14.)

On December 20, Union president Niemi sent O’Leary a letter acknowledging receipt of O’Leary’s December 17 letter proposing changes to certain benefit plans. The December 20 letter requested that discussions between the Respondent and the Union begin as soon as possible concerning the proposed changes and the letter pointed out to O’Leary that the information requested on November 21 had not yet been provided and that the information was necessary to complete good faith bargaining about the Respondent’s proposed changes to health plan benefits. The letter further states that despite Respondent asking its employees to enroll for the 2013 health plan and Respondent’s notice of contemplated changes to the plan, the Union notes that it would object if the proposed changes are effective on January 1, 2013 as the December 17th notice letter does not specify a proposed effective date for the changes. (GC Exh. 15.)

On January 15, 2013, Crider emailed O’Leary another reminder request for the same information requested as of November 21 pointing out that whether Respondent wishes to pursue changes in the health plans in 2013, the Union needs the requested information in order to evaluate the plans, determine whether or not the plans conform to the ACA, develop proposals for the bargaining unit for a successor contract, and engage in meaningful bargaining at that time. The letter further mentions that Respondent has ignored and not provided any of the requested information.

None of the information requested in the November 21 information request was provided to the Union by the Respondent and the Respondent did not object to any of the requests on any grounds.

Analysis

A. The Respondent’s Untimely Responses to the Union’s February and May Information Requests

An employer has an obligation to provide a union with relevant information during collective-bargaining negotiations. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153 (1956). It is well

settled that an employer must provide information relevant to a union’s decision to file or process grievances. See *Beth Abraham Health Services*, 332 NLRB 1234 (2000); *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976).). If the information sought relates to the processing of a grievance, (or potential grievance), the legal test is whether the information is relevant to the grievance and the determination of relevancy is made based on a liberal, discovery type of standard. *Acme*, 385 U.S. at 437; *Knappton Mar. Corp.*, 292 NLRB 236 (1988). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even, ultimately reliable. *U.S. Postal Serv.*, 337 NLRB 820, 822 (2002). Like a flat refusal to bargain, “[t]he refusal of an employer to provide a bargaining agent with information relevant to the union’s task of representing its constituency is a per se violation of the Act” without regard to the employer’s subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), *enfd.* 603 F.2d 1310 (8th Cir. 1979).

Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed “so intrinsic to the core of the employer-employee relationship” as to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees’ collective-bargaining representatives unless the employer establishes legitimate affirmative defenses to the production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *U.S. Postal Service*, 332 NLRB 635 (2000). However, when the requested information does not concern subjects directly pertaining to the bargaining unit, such material is not presumptively relevant, and the burden is upon the labor organization to demonstrate the relevance of the material sought. *Disneyland Park*, 350 NLRB at 1257; *Richmond Health Care*, 332 NLRB 1304, 1305, n. 1 (2000).

Here, I find that the information requested in this case, personnel files, disciplinary actions, and CVOR work schedules for some unit employees in connection with a unit employee’s step 2 grievance is presumptively relevant. See *Booth Newspapers, Inc.*, 331 NLRB 296, 300 (2000); *Leland Stanford Junior University*, 307 NLRB 75, 80 (1992); *Castle Hill Healthcare*, 355 NLRB 1156, 1179 (2012). Nonetheless, this requested information was produced by the Respondent on September 23 without objection and I find that all objections to its production at this time have been waived and also, as referenced above, because I draw adverse inferences from Respondent’s continued failure to produce documents at hearing, the complaint allegations stand un-rebutted as related to the information requests and the underlying relevance of those requests.

Moreover, the primary issue here is whether the 7 month delay in producing the requested information is a violation of the Act itself.

The first written request for this information was on February 23. The information was provided on September 23, 7 months after the initial written request for information. While there is no per se rule regarding timeliness of furnishing information, the law requires a “reasonable good faith effort to respond to the request as promptly as circumstances allow.” *Allegheny Power*, 339 NLRB 585, 587 (2003); see also *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). “An employer must respond to the information request in a timely manner” and “[a]n unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as

a refusal to furnish the information at all.” *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2000); see also *Newcor Bay City Division*, 345 NLRB 1229, 1237 (2005) (and cases cited therein). The complexity and extent of the information sought, its availability, and the difficulty in retrieving the information are factors considered in determining whether an employer has responded with reasonable promptness. *Id.*, citing *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

The Board recently affirmed the ALJ’s finding in *Mountain View Country Club, Inc.*, 359 NLRB No. 102 (April 25, 2013), where she found that a 3 month, 21 day delay period was adequate to find a violation of the Act.

Here, Respondent is a single-location employer and does not assert that the information sought by the Union was difficult to retrieve. The personnel files, disciplinary records and corrective actions for 2 unit employees in the CVOR as well as the CVOR employee work schedules for January and February would not appear to be complex and there is no evidence in the record that complexity of the information sought was a factor in the timing of production of the documents. The requested information relates specifically to unit employee Frost’s step 2 grievance. Finally, there is no evidence that the information was unavailable. Thus, the factors of complexity, availability, and extent of the information sought militate toward a prompt response. However, each time the Union reiterated its request for information, Respondent’s representative merely ignored the requests. From the lack of evidence providing an adequate explanation for the delay in production, I find that Respondent’s representative made no attempt to gather the information and provide it to the Union from February 23 until September 23 when the information was finally provided to the Union.

The Respondent offered no evidence at hearing as to why it failed to supply the requested information in a timely manner. Thus, I find that for the 7 month period from February 23 to September 23, Respondent failed to provide the information in a reasonably prompt manner and thereby bargained in bad faith with the Union. See *Mountain View Country Club, Inc.*, 359 NLRB No. 102 (April 25, 2013) (Board affirms ALJ who found a 3 month, 21 day delay in providing information to be untimely and a violation of Section 8(a)(1) and (5) of the Act.)

For the reasons stated above, I find that Respondent’s 7 month delay in producing the requested information responsive to the February 23 information request is a violation of Section 8(a)(1) and (5) of the Act.

B. The Information Sought in the Union’s November 21, 2012 Request for Information Is Relevant and Must Be Produced

Under Section 8(a)(5) and 8(d) of the Act, an employer is required to provide the union with relevant information needed to enable it to properly perform its duties as the employees’ bargaining representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967) (citing *Labor Board v. Truitt Mfg. Co.*, 351 U.S. 149 (1956) (holding that an employer had a duty to provide information relevant to bargainable issues upon requests from the union)); see also *Detroit Edison v. NLRB*, 440 U.S. 301, 303 (1979) (noting the duty to supply information turns upon “the circumstances of the particular case”) (citing *Truitt Mfg. Co.*, 351 U.S. at 153)).⁸

⁸ “A broad disclosure rule is crucial to full development of the role of collective bargaining contemplated by the Act. Unless each side has access to information enabling it to discuss intelligently

When the union’s request for information pertains to employees within the bargaining unit, the information is presumptively relevant and the employer must provide the information. *Disneyland Park*, 350 NLRB 1256, 1257 (2007). As a general rule, information regarding a bargaining unit employee’s wages, hours, and other terms and conditions of employment is also presumptively relevant. *Whitin Mach. Works*, 108 NLRB 1537, 1541 (1954).

The duty to furnish information requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow. *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). Here, the Respondent never produced any information responsive to the Union’s November 21 information request. The information requested by the Union, here, is presumptively relevant. Information concerning the bargaining unit’s health plan is presumptively relevant. See *Honda of Hayward*, 314 NLRB 443 (1994) (Information about bargaining unit employees’ health insurance plans are presumptively relevant.) In *Aztec Bus Lines, Inc.*, the Board affirmed the ALJ’s finding that basic information such as the carrier of the health benefit plan was as much of a “component” of the health and welfare plan as was the level of coverage. *Aztec Bus Lines, Inc.*, 289 NLRB 1021, 1037 (1988). Similarly, information about the claims experience and history of unit employees on the health plan is also presumptively relevant. *Hanson Aggregates BMC, Inc.*, 353 NLRB 287, 288 (2008); *North American Soccer League*, 245 NLRB 1301, 1306 (1979).

Similarly, the Union’s request for information concerning items including those itemized in its request are presumptively relevant, as the Union states, to understand the ramifications of the Respondent’s mid-November proposed health plan changes - this information was needed so that the Union could effectively bargain with Respondent about its proposed changes to its health plan. Crider’s November 21 letter request contains detailed reasons why the Union needed the information and the specific types of documents requested. (GC Exh. 13.) Significantly, as stated above, Crider explained that the summary plan documents were needed to establish a baseline for discussions of proposed changes to the plan, financial information was needed for an independent analysis of the overall cost of the plan to evaluate what portions of the proposed plan cost increases should be shouldered by the unit employees versus other ways to shift costs elsewhere, local Respondent operating costs were needed to compare to the CHS national plan costs, and information related to costs at other CHS-affiliated hospitals would be used for comparison and alternate proposals at anticipated bargaining sessions. See *New Surfside Nursing Home*, 330 NLRB 1146, 1146 fn.1, 1149 (2000) (Board affirmed the ALJ’s finding of relevance for information requested by the union regarding a submission to government agencies, such as Medicare, and finding that the requested information assisted the union in evaluating the employer’s economic proposals and demands during bargaining).

Further, the Respondent has failed to establish any other legal basis for not producing the requested information. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996). No evidence was offered in support of these general boilerplate objections and, on that basis, I find no loosely

and deal meaningfully with bargainable issues, effective negotiation cannot occur.” *Detroit Newspaper Printing & Graphic Communications Union v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979). “[R]elevancy is synonymous with “germane”; and a party must disclose information if it has any bearing on the subject matter of the case.” *Id.* (internal citations omitted).

asserted objection warranted refusal to furnish the information. Also, as referenced above, because I draw adverse inferences from Respondent’s continued failure to produce documents at hearing, the complaint allegations stand un-rebutted as related to the information requests and the underlying relevance of those requests.

I observed Crider opine persuasively and with confidence that she would not have prepared and sent the November 21 request for information if she had not received the basic summary from O’Leary that caused her to request information related to the proposed health plan benefits cost increases unilaterally raised in mid-November by the Respondent.⁹ I further find that Respondent’s mid-November proposed changes to its health plan covering bargaining unit employees triggered, a year ahead of the CBA’s actual expiration date, the Union’s need for the requested information. I further find that it was reasonable for Crider to believe that contract negotiations were resuming with Respondent’s unilateral action and necessary to determine whether the Union could accept the proposed changes to Respondent’s health plan benefits. Even though O’Leary denied that Respondent would seek to unilaterally propose a change to its health plan benefits in mid-December telephone conversation with Crider, O’Leary contradicted herself when she sent formal notice to the Union of the proposed unilateral changes in her December 17 letter received the very next day by the Union. It is with this backdrop that I further find that Respondent became obliged to furnish the requested information as the General Counsel has proven that the Union raised concerns related to timely contract negotiations once the Respondent proposed its unilateral changes to its health plan benefits and that the requested information is needed to effectively bargain with the Respondent about its proposed changes.

Therefore, I find that Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent McKenzie-Willamette Regional Medical Center Associates, LLC, d/b/a McKenzie-Willamette Medical Center is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

2. The Service Employees International Union, Local 49, CTW-CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. By unreasonably delaying the furnishing of information set forth in paragraphs 6(a), 6(b), 6(g)-6(i), 7 and 8 of the complaint, the Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act.

⁹ Consistent with Respondent’s unilateral or “lone wolf” strategy at the start of trial, Respondent proceeded without any witnesses to call and proclaimed, without support, that the parties had fully settled their differences over the preceding weekend and trial had become unnecessary. The General Counsel and Charging Party vehemently disagreed with Respondent’s counsel about any settlement development. I asked Respondent’s counsel if he had a signed settlement agreement to produce so we would not have to waste any further resources with trial. Respondent’s counsel responded that he did not have a signed settlement agreement to present to me so trial went forward.

4. By failing and refusing to furnish the information set forth in complaint paragraph 6(c)-6(g), 6(j), 7 and 8 of the complaint, the Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act.

5. The Respondent's above-described unfair labor practice affects commerce within the meaning of Sections 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, it shall be ordered not to unreasonably delay the supply of relevant requested information and to produce the information and post and mail a notice to employees attached as the Appendix.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:¹⁰

ORDER

Respondent, McKenzie-Willamette Regional Medical Center Associates, LLC d/b/a McKenzie-Willamette Medical Center, Springfield, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Failing and refusing to respond to information requests made by the Service Employees International Union, Local 49, CTW-CLC, in a timely manner.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Respondent shall take the following affirmative action necessary to effectuate the policies of the Act:

- (a) Within 14 days of this Order, furnish the Union with the information that it requested by letter on November 21, 2012.
- (b) Within 14 days after service by the Region, post at its facility in Springfield, Oregon, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

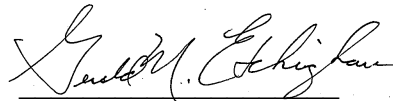
¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order, as provided in Section 10.48 of the Rules, shall be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since February 23, 2012.

- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. June 3, 2013



Gerald M. Etchingham
Administrative Law Judge

APPENDIX

**NOTICE TO EMPLOYEES
POSTED ORDER OF THE
National Labor Relations Board
An Agency of the United States Government**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything to prevent you from exercising the above rights.

Service Employees International Union, Local 49, CTW-CLC, (the Union) is the exclusive representative in dealing with us regarding wages, hours, and other working conditions of certain non-professional employees at our facilities in Springfield, Oregon.

WE WILL NOT refuse or unreasonably delay in providing the Union with information that is relevant and necessary to its role as your bargaining representative.

WE HAVE provided the Union with all of the documents supporting the assertions we made in our February 21, 2012, grievance response letter concerning the work performance and behavior of the bargaining unit employee named in the Union's May 14, 2012, information request, the personnel files of the bargaining unit employees named in the Union's February 23, 2012, and May 14, 2012, information requests, and with the weekly Cardiovascular Operating Room department schedules requested in the Union's May 14, 2012, information request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the information in our possession that was requested by the Union in its letter of November 21, 2012.

**McKENZIE-WILLAMETTE REGIONAL
MEDICAL CENTER ASSOCIATES, LLC d/b/a
McKENZIE-WILLAMETTE MEDICAL CENTER**

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

915 Second Ave., 29th Floor

Seattle, Washington 98174

Hours: 8:15 a.m. to 4:45 p.m.

206-220-6300.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 206-220-6300.